

STATE OF NEW JERSEY
PUBLIC EMPLOYMENT RELATIONS COMMISSION
BEFORE THE DIRECTOR OF UNFAIR PRACTICES

In the Matter of

SOUTHERN REGIONAL BOARD
OF EDUCATION,

Respondent,

-and-

DOCKET NO. CI-78-22

VIVIAN JILLSON,

Charging Party.

SYNOPSIS

The Director of Unfair Practices declines to issue a Complaint with respect to a Charge by an individual alleging that the elimination of her former job title and placement in another title constituted an unfair practice under the New Jersey Employer-Employee Relations Act, specifically, N.J.S.A. 34:13A-5.4(a)(3). The Director finds that the Charging Party's assertion of a §(a)(3) violation was not supported in the Charge insofar as the Charging Party did not state facts in support of an allegation that the Board discriminated against her in regard to hire, tenure, or as to a term or condition of employment with an intent to encourage or discourage her in the exercise of protected rights under the Act.

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Appearances:

For the Respondent
Jacob Green, Esq.
(Allan P. Dzwilewski, of Counsel)

For the Charging Party
Shackleton, Hazeltine, Zlotkin & Dasti, Esqs.
(Frank A. Buczynski, Jr., of Counsel)

REFUSAL TO ISSUE COMPLAINT

An Unfair Practice Charge was filed with the Public Employment Relations Commission (the "Commission") on December 20, 1977, by Vivian Jillson (the "Charging Party") against the Southern Regional Board of Education (the "Respondent"). The allegations in the Charge essentially assert that the Respondent is in violation of one of the unfair practice provisions of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., as amended (the "Act"), specifically N.J.S.A. 34:13A-

5.4(a)(3) ^{1/} by eliminating the position of staff secretary, which position the Charging Party held, and, therefore, allegedly freezing the Charging Party's salary as she is now assigned the position of secretary. ^{2/}

N.J.S.A. 34:13A-5.4(c) sets forth, in pertinent part, that the Commission shall have the power to prevent anyone from engaging in any unfair practice, and that it has the authority to issue a complaint stating the unfair practice charge. ^{3/} The Commission has delegated its authority to issue complaints to the undersigned and has established a standard upon which an unfair practice complaint may be issued. This standard provides that a complaint shall issue if it appears that the allegations of the charging party, if true, may constitute an unfair practice within the meaning of the Act. ^{4/} The Commission's rules also provide that the undersigned may decline to issue a complaint. ^{5/}

^{1/} This subsection prohibits public employers, their representatives or agents from: "(3) Discriminating in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage employees in the exercise of the rights guaranteed to them by this act."

^{2/} Note that the differentiation is between "secretary" and "staff secretary."

^{3/} N.J.S.A. 34:13A-5.4(c) provides: "The commission shall have exclusive power as hereinafter provided to prevent anyone from engaging in any unfair practice...Whenever it is charged that anyone has engaged or is engaging in any such unfair practice, the commission, or any designated agent thereof, shall have authority to issue and cause to be served upon such party a complaint stating the specific unfair practice and including a notice of hearing containing the date and place of hearing before the commission or any designated agent thereof..."

^{4/} N.J.A.C. 19:14-2.1.

^{5/} N.J.A.C. 19:14-2.3.

For the reasons stated below, the undersigned has determined that the Commission's complaint issuance standards have not been met.

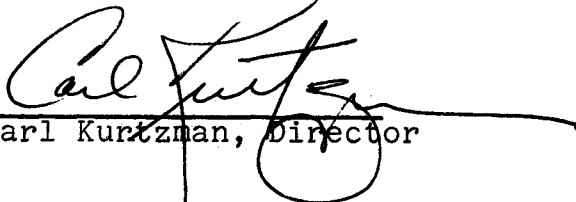
As noted above, the Charging Party alleges a violation of §(a)(3). However, the Charge does not state that the Respondent has discriminated against her in regard to hire, tenure, or as to a term and condition of employment with an intent to encourage or discourage her in the exercise of protected rights under the Act. ^{6/} The assertion of facts alleging such a claim is necessary to support an alleged §(a)(3) violation. See In re Plumsted Township Board of Education, D.U.P. No. 78-4, 3 NJPER 335 (1977); In re Borough of Palisades Park, D.U.P. No. 78-1, 3 NJPER 238 (1977).

The factual assertions by the Charging Party set out a description of the process by which she was informed that the staff secretary position was eliminated. The Charge asserts that the Charging Party was not given an explanation of this action nor an opportunity to appear before the Board of Education to present her position. However, there is no allegation establishing a nexus between the Respondent's action and the Charging Party's exercise of any specific protected activity under the Act. Thus, the Charge fails to establish the element which is essential in meeting the standard for the issuance of a complaint as to a §(a)(3) violation.

^{6/} N.J.S.A. 34:13A-5.3 provides: "Except as hereinafter provided public employees shall be protected in the exercise of, the right, free and without fear of penalty or reprisal, to form, join and assist any employee organization or to refrain from any such activity..."

Accordingly, for the reasons stated above, the undersigned declines to issue a Complaint.

BY ORDER OF THE DIRECTOR
OF UNFAIR PRACTICES


Carl Kurtzman, Director

DATED: June 22, 1978
Trenton, New Jersey